

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ROBERT MURPHY,)	
)	
Petitioner,)	
)	
v.)	No. 1:19-cv-04667-JPH-DLP
)	
WARDEN,)	
)	
Respondent.)	

Order Dismissing Petition for a Writ of Habeas Corpus for Lack of Jurisdiction

Robert Murphy filed this habeas action pursuant to 28 U.S.C. § 2254 challenging his state-court conviction for murder in Indiana case number 18C05-0903-MR-1. Dkt. 1. Mr. Murphy already has brought a § 2254 habeas petition in the Northern District of Indiana challenging the same conviction. That petition was denied on the merits, No. 3:16-CV-606 (N.D. Ind. Apr. 17, 2018), and the Seventh Circuit denied his request for a certificate of appealability, No. 18-901 (7th Cir. Dec. 26, 2018).

When there has already been a decision on the merits in a federal habeas action, to obtain another round of federal collateral review a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b). *See Altman v. Benik*, 337 F.3d 764, 766 (7th Cir. 2003). This statute “creates a ‘gatekeeping’ mechanism for the consideration of second or successive [habeas] applications in the district court.” *Felker v. Turpin*, 518 U.S. 651, 657 (1996). Indeed, a district court does not have subject matter jurisdiction over a second or successive petition. *In re Page*, 170 F.3d 659, 661 (7th Cir. 1999). The “district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for the filing.” *Id.*

Mr. Murphy previously tried to file a successive petition in this Court, which was dismissed as unauthorized because he had not sought permission from the Court of Appeals. *See* No. 1:19-cv-02526-TWP-MPB, dkt. 11. Mr. Murphy then sought permission from the Seventh Circuit Court of Appeals, and he includes as an exhibit to this petition an order from the Seventh Circuit denying authorization to file a successive collateral attack. Dkt. 1-1 at 9-10. Because that court denied authorization, this action is **dismissed** for a lack of jurisdiction. Final judgment consistent with this order shall issue.

SO ORDERED.

Date: 1/8/2020



James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

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